In the

Supreme Court of the United States

October Term, 1958

No. 51

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA, EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether the Petitioner was legally justified in refusing to obey the Orders of a Court of competent jurisdiction requiring him to answer questions put to him by a duly constituted Legislative Committee.

STATEMENT

At the time of his appearance before the Committee, Petitioner based his refusal to answer the Committee's questions on his rights under the provisions of Sections 8, 11, and 12 of the Virginia Constitution "and the correlative provisions of the Federal Constitution" (Tr., September 20, 1957, pp. 202-205). Petitioner did not specifically rely

on the First and Fourteenth Amendments to the Constitution of the United States, and such Amendments have only come into this matter by way of the arguments presented by his counsel (Tr., October 15, 1957, pp. 4, 54, 61), and before this Court.

His reliances on the provisions of the Virginia Constitution were effectively answered when he was denied a Writ of Error by the Supreme Court of Appeals of Virginia (Order, January 20, 1958; R. 111-112).

ARGUMENT

The Petitioner places considerable reliance on *United States* v. *Rumely*, 345 U. S. 41, 97 L. ed. 770, 73 S. Ct. 543, but fails to take into account that portion of the opinion wherein it was stated that "Whenever constitutional limits upon the investigative power of Congress have to be drawn by this Court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits. Experience admonishes us to tread warily in this domain" (p. 46). The same applies with at least equal force and vigor to the investigative power of a State legislative body in its search for information on which to base appropriate legislation. If the Federal Courts can step in and prevent State legislative bodies from making inquiries into fields reserved to them, then such legislative bodies cease to have any meaning or purpose.

The Petitioner also relies heavily on *Watkins* v. *United States*, 354 U. S. 178, and *Sweezy* v. *New Hampshire*, 354 U. S. 234, but a careful reading of these two cases fails to indicate that they are on all fours or are in any way applicable to the facts in the case at bar; nor does it appear that either of them overrules, modifies, or otherwise limits the

decisions in *Carfer* v. *Caldwell* (1906), W. Va., 26 S. Ct. 264, 265; 200 U. S. 293, 50 L. ed. 488, 50 A. L. R. 1; *McGrain* v. *Daugherty*, 273 U. S. 135, 71 L. ed. 580, 47 S. Ct. 319; *Sinclair* v. *United States*, 279 U. S. 263, 73 L. ed. 692, 49 S. Ct. 268; or *Tenney* v. *Brandhove* (Calif.), 71 S. Ct. 783, 341 U. S. 367, 95 L. ed. 1010.

In the last case cited, this Court said:

> "Investigations, whether by standing or special committees, are an established part of representative government. . . . The Courts should not go beyond the narrow confines of determining that a Committee's inquiry may fairly be deemed within its provinces. To find that a Committee's investigations have exceeded the bounds of legislative inquiry, it must be obvious that there was a usurpation of functions exclusively vested in the Executive or the Judiciary."

As was pointed out by the Trial Court (Tr., October 15, 1957, p. 85), the questions asked by the Committee were only of a preliminary nature. The answers to these questions could not possibly have the effect of restraining or deterring the Petitioner in any way. As the Chairman pointed out to the Petitioner, the subjects under inquiry were three-fold (R. 73). All of these were proper subjects of legislative inquiry, and in order that the Committee might carry out its functions, it was certainly necessary, indeed, *proper* to inquire into the workings of organizations which might be affected thereby. The only way to learn about such organizations is to question those connected therewith. If questions concerning membership in the Communist Party are pertinent to a congressional investigation into subversive activities (*Barsky* v. *United States*, 83 App. DC 127, 167 F. 2d 241, *cert. den.* 334 U. S.

843), as well as an inquiry as to finances and personnel of an organization which is under investigation (*Morford* v. *United States,* 85 App. DC 172, 176 F. 2d 54; *Marshall* v. *United States,* 85 App. DC 184, 176 F. 2d 473, *cert. den.* 339 U. S. 933), then the mere preliminary questions asked by the Thomson Committee are not subject to the criticism that they constituted an invasion of Constitutional rights.

NAACP v. *Alabama,* 357 U. S. 449, has no application here, because in the case at bar, the Petitioner was not asked to produce any membership lists of any organizations. Petitioner, therefore, has tried to extend the holdings in the *Watkins, Sweezy* and *NAACP* cases far beyond what the Court said or meant.

The Petitioner has adopted a method of presentation of his case which is all too prevalent these days—that is, he has gone completely outside the record in including in his Brief such material as quotations from the *Washington Post and Times Herald, Theology Today,* and *The Southern School News.* Surely, this Court will not be swayed by such obvious political and social propaganda.

It is not a matter for a witness before such committees finally to decide whether a question is pertinent to the inquiry. *Townsend* v. *United States,* 68 App. DC 223, 95 F. 2d 352, *cert. den.* 303 U. S. 664, 82 L. ed. 1121, 58 S. Ct. 830.

If the position taken by the Petitioner is allowed to prevail, then neither Congress nor any State Legislature would ever be able to obtain adequate information on which to properly legislate should witnesses called before their respective Committees choose to remain silent. Thus a few individuals would be able to hamstring the whole legislative process. Certainly, such a result was never intended by the framers of the Constitution.

CONCLUSION

For the foregoing reasons, the Respondent contends that the Circuit Court of Arlington County, Virginia, acted within Constitutional limitations in finding the Petitioner guilty of contempt of its Orders, and that the Supreme Court of Appeals of Virginia was plainly right in refusing to grant a Writ of Error.

Respectfully submitted,

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